

§ 780.615

a farmer under the Act is one who engages, as an occupation, in farming operations as a distinct activity for the purpose of producing a farm crop. A corporation or a farmers' cooperative may be a "farmer" if engaged in actual farming of the nature and extent there indicated.

§ 780.615 Raising of livestock.

Livestock auction operations are within the 13(b)(13) exemption only when they are conducted as an adjunct to the raising of livestock by the farmer. The farmer is required to engage in the raising of livestock as a prerequisite for the exemption of an employee employed in the operations described in section 13(b) (13). Engagement by the farmer in one or more of the other branches of farming will not meet this requirement.

§ 780.616 Operations included in raising livestock.

Raising livestock includes such operations as the breeding, fattening, feeding, and care of domestic animals ordinarily raised or used on farms. A fuller discussion of the meaning of raising livestock is contained in §§ 780.119 through 780.122.

§ 780.617 Adjunct livestock auction operations.

The livestock auction operations referred to in section 13(b)(13) are those engaged in by the farmer "as an adjunct" to the raising of livestock. This phrase limits the relative extent to which the farmer may conduct livestock auctions and claim exemption under section 13(b)(13). To qualify under the exemption provision, the auction operations should be an established part of the farmer's raising of the livestock and subordinate to it. (*Hearnsberger v. Gillespie*, 435 F. 2d 926 (C.A. 8).) The auction operations should not be conducted on so large a scale as to predominate over the raising of livestock. The livestock auction should be adjunct to the farmer's raising of livestock not only when he engages in it on his own account, but also when he joins with other farmers to hold an auction.

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§ 780.618 "His own account"—"in conjunction with other farmers."

Under the terms of section 13(b)(13), the farmer may operate a livestock auction solely for his own benefit or he may join with "other farmers" to auction livestock for their mutual benefit. (See § 780.614 with regard to the definition of "farmer.") Unless the auction is conducted by the farmer alone or with others who are "farmers" the exemption does not apply.

§ 780.619 Work "in connection with" livestock auction operations.

An employee whose agricultural employment meets the tests for exemption may engage in "other" employment "in connection with" his employer's livestock auction operations under the conditions stated in section 13(b)(13). The work which an employee may engage in under the phrase "in connection with" includes only those activities which are a necessary incident to conducting a livestock auction of the limited type permitted under the exemption. Such work as transporting the livestock and caring for it, custodial, maintenance, and clerical duties are included. Work which cannot be considered necessarily incident to the livestock auction is not exempt.

§ 780.620 Minimum wage for livestock auction work.

The application of the exemption is further determined by whether another condition has been met. That condition is that the employee, in the workweek in which he engages in livestock auction activities, must be paid at a wage rate not less than the minimum rate required by section 6(a)(1) of the Act for the time spent in livestock auction work. The exemption does not apply unless there is payment for all hours spent in livestock auction work at not less than the applicable minimum rate prescribed in the Act.